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March 19, 2004

VIA ELECTRONIC MAIL

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: ***Notice of Ex Parte Presentation***
(CC Docket No. 02-361)

Dear Ms. Dortch:

On February 18, 2004, Deb Lenart (Chief Executive Officer, Callipso Corporation), Andrew D. Lipman (Swidler Berlin Shereff Friedman, LLP), and the undersigned met separately with Commissioner Kevin Martin and Daniel Gonzales (Commissioner Martin's Senior Legal Advisor) and Commissioner Adelstein and Ann Perkins (Commissioner Adelstein's Special Assistant). At both meetings, Callipso reiterated positions set forth in its previously filed *ex partes* in this docket. In the event the Commission determined to act on the AT&T Petition prior to acting on its recently initiated comprehensive IP-enabled services rulemaking, Callipso supported the Commission's grant of AT&T's Petition continuing the exemption of the origination or termination of phone-to-phone VoIP calls from access charges. Ms. Lenart explained Callipso's concern – a concern shared by other VON Coalition members -- that imposition of access charges on such calls could have a negative effect on the development of VoIP and IP-enabled applications well beyond the limits of VoIP calls handled by a traditional IXC.

Ms. Lenart explained the nature of the Callipso network as outlined in the attached description, which was provided at the meetings. The Callipso network makes IP-enabled applications available to the large percentage of people who do not yet have broadband services.

Ms. Lenart explained that, in the event the Commission were to deny AT&T's Petition, prior to concluding its ongoing rulemaking proceeding, it is essential that the decision be carefully crafted to apply only to AT&T and only for such time as it takes to complete the Commission's IP-enabled services rulemaking. At the same time, the Commission should reiterate the continued exemption from access charges for enhanced services provided by enhanced service providers and prohibit ILECs from engaging in self-help by imposing, or

threatening to impose, access charges on such calls, or by refusing to provide service to VoIP providers as end users. Callipso, like all other ISPs, bought retail circuits from CLECs. In taking the position that access charges apply, ILECs have sought to treat Callipso as a carrier, not as an end user, and refused or threatened to refuse to make retail business line rates available. Moreover, the Commission should recognize that the ILEC is receiving TELRIC-based reciprocal compensation rates for these calls. Application of access charges would constitute a windfall. If the Commission fails to explicitly eliminate such self-help, the decision could adversely impact the further development of the numerous interactive IP-enabled applications that Callipso was developing and implementing. To the extent the Commission sought to address the issue of the application of access charges to companies other than AT&T, the Commission should wait to act on the context of its ongoing comprehensive IP-enabled service rulemaking proceeding, when the issues can be considered in the light of a fully developed record.

Pursuant to Section 1.12 of the Commission's rules, this letter is being electronically filed with your office.

Respectfully submitted,

By: _____
Richard M. Rindler

Attachment
cc (w/attachment):
Commissioner Kevin Martin (via e-mail)
Daniel Gonzalez (via e-mail)
Commissioner Jonathan Adelstein (via e-mail)
Ann Perkins (via e-mail)

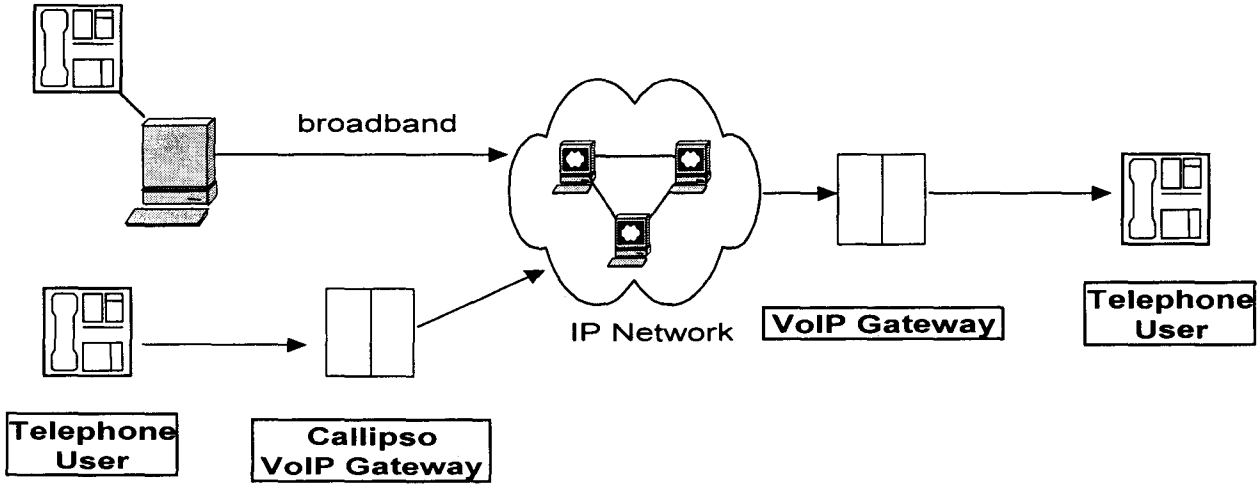
Callipso

ENHANCED IP SERVICES

"Broadband VoIP" vs. "Gateway VoIP": All VoIP Models Deserve Uniform Regulatory Treatment

Callipso, a leading provider of enhanced IP services, including Voice over Internet Protocol (VoIP) telephony, enables Americans *without a broadband connection* to access low-cost VoIP long distance telephony by dialing into a Callipso VoIP "gateway". Alternatively, end-users with a broadband connection can acquire their own device to enable VoIP protocol conversion. From a regulatory perspective, Callipso believes that all VoIP business models (those that enable protocol conversion at the customer premises and those that convert at network gateways) deserve uniform regulatory treatment.

Voice over Internet Protocol ("VoIP") technology and its commercial deployment have been rapidly evolving. At its simplest, an analog voice stream is converted by computer processing into digital packets, which are routed over a network using Internet Protocol and reassembled for delivery to the destination party. The initial computer processing and protocol conversion can occur at a device at the calling customer's premises, or can occur further downstream in the transmission path, such as at a gateway at the edge of the IP network. At the destination end of the transmission, the reverse conversion occurs, depending on the receiving equipment of the destination party.



It is not yet time to regulate any VoIP model

VoIP presently poses ***no real and immediate threat of harm*** to either consumers or the pro-competitive policies enunciated by Congress. Both models, together, still only account for a fraction ($1/10^{th}$ of one percent) of all long distance minutes in the U.S. This is a ***nascent industry***. The VoIP industry should continue to be allowed to develop unregulated, much as the wireless industry was allowed to develop. Regulation now is ***premature***, as the industry evolves and VoIP business models evolve and become increasingly hybrid. What may today appear as mere phone-to-phone telephony with a VoIP transport component provided by a competitive new entrant, actually is the first step building block in the development of a broader suite of IP platform services.

There is no justification for discriminatory treatment between VoIP models

Both the customer premises equipment model, such as represented by Vonage, and the gateway model, such as represented by Callipso, involve the conversion of voice communications into digital packets

which are efficiently routed over IP networks. ***Both models qualify as providing an "information service"***. Only the transit facilities used by the end user to reach the IP platform and network differ. The customer premises VoIP model is available to those with a broadband connection (whether over cable modem or DSL or wireless), while the gateway VoIP model is more broadly available to anyone with access to a traditional phone. The difference in how end users reach the IP platform does not change the function and resulting legal characterization of the IP platform service.

Both models are evolving and both are being commercially deployed, both provide the American consumer the cost benefits of VoIP telephony, and both provide the American consumer a substantially ***similar end-to-end communications experience***. And while the origination path of the VoIP models may differ, both models currently terminate traffic to users of traditional phones (for the most part), so the termination paths of both models are identical. (And to the extent the broadband-enabled VoIP caller utilizes DSL, both models originate calls over PSTN facilities.)

Our view is that neither the FCC nor Congress should pick winners and losers among similar evolving technologies and business models. The industry should continue to ***evolve, driven by market forces*** and not by premature and uninformed regulation. The FCC and Congress should uniformly encourage innovation and the deployment of new IP technologies, regardless of whether such innovation is presently positioned at the beginning, at the middle or at the end of the transmission of a VoIP communication.

Until such time as broadband is widely deployed to American households and businesses, there is no compelling justification to adopt regulations which ***discriminate against the American consumer either with or without access to broadband*** by treating one model differently from the other.

Discriminatory regulatory treatment between VoIP models is difficult to apply

No two VoIP services providers have the identical business model; indeed, as the industry is evolving, the business models are becoming more complex and hybrid, involving elements of both the gateway model and the customer premises equipment model. A negative regulatory ruling against one model will invite a multitude of requests for ***clarification*** as each VoIP services provider attempts to distinguish its service from the negative ruling.

To the extent the FCC or Congress do not treat all VoIP models uniformly and consistently, negative regulation which distinguishes among devices or business models risks becoming ***rapidly outdated***, and is subject to ***circumvention***.

Any disparate treatment of VoIP calls which requires an appreciation of the call's entire route will in practice be difficult, if not impossible to apply by anyone who lacks the needed end-to-end view.

VoIP differentiation would exacerbate *access charge system inequities*

Subjecting one VoIP model to above-cost access charges, while exempting the other, highlights the fundamental inequities of the access charge system. Why should different VoIP service providers pay different rates to ILECs to complete local connections, even though the ***costs for doing so are the same***?

VoIP differentiation would *discourage ILEC broadband deployment*

If VoIP calls originated over broadband connections are exempt from access charges, but those VoIP calls initiated through gateways by those without a broadband connection entitle the ILECs to recover above-cost access charges, the ILECs have reason to perpetuate legacy transport services and have no incentive to accelerate deployment of broadband connectivity to all Americans.